IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8252 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE D.H.WAGHELA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

1 to 5 No

GUJARAT WATERSUPPLY AND SEWERAGE BOARD

Versus

JAYANTIBHAI MOHANLAL BHOI

Appearance:

MR HS MUNSHAW for Petitioner

MR HARIN P RAVAL for Respondent No. 1

CORAM : MR.JUSTICE D.H.WAGHELA

Date of decision: 25/08/2000

ORAL JUDGEMENT

By way of this petition under Articles 226 and 227 of the Constitution of India, the petitioner has challenged the award dated 21.4.1997 made by the Labour Court, Godhra in Reference (LCG) No.385 of 1990 whereby

the respondent is ordered to be reinstated with 25% backwages.

2. The learned counsel Mr.Munshaw appearing for the petitioner has vehemently argued that the respondent was a daily wager and duly discharged in February 1989 upon the work being entrusted to a contractor. Thereafter, when the work was resumed with the Department, he was bona fide called for resuming his duties and the respondent did work for 22 days in June 1989. It is submitted that the respondent had, in order not to work on a particular equipment, abandoned his job and the plea and evidence in that regard is not properly appreciated by the learned Judge of the Labour Court. Broadly on these grounds, it is prayed that the impugned award is required to be quashed and set aside.

3. Going through the evidence and material produced with the petition and the impugned award, it is clear that the respondent had worked under the petitioner since August 1987 and at the time of his first termination of service in February 1989, the mandatory requirements of law were not complied with. It is admitted that the respondent was re-employed in June 1989 upon receipt of a communication from the petitioner. However, after working for 22 days, the respondent is alleged to have abandoned his job. The impugned award records the fact that the wages for the days worked in June 1989 were paid in January 1996 and no evidence whatsoever is found as regards the abandonment of service by the respondent. The respondent has, in his evidence before the Labour Court, brought on record the fact that he had repeatedly reported for duty but was not taken on the job. As against that, as pointed out by the learned counsel for the petitioner, the engineer of the petitioner had instructed the respondent to report for duty at a particular site which instruction was not obeyed by the respondent.

4. After consideration of the evidence on the material aspect of the controversy, the Labour Court has reached the finding of fact that the service of the respondent was illegally terminated. Obviously, the defence of abandonment of service by the respondent is not believed after appreciation of the evidence. Even after going through the evidence placed on record, it is not established before this Court that the aforesaid findings of the Labour Court are, in any way, perverse or illegal. It is also an admitted position that after the alleged misconduct and refusal to report for duty at a particular site, the petitioner has not taken any action.

Therefore, it is difficult to believe that the respondent could have abandoned his job even without claiming the wages which were due to be paid to him.

5. In the circumstances and for the reasons discussed above, no case is made out to interfere with the impugned award and order and, therefore, the petition is rejected. Rule is discharged with no order as to costs.

Sd/-

(KMG Thilake)
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